

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

APEX CLEARING CORP.,

Plaintiff and  
Counter-Defendant,

v.

AXOS FINANCIAL, INC. AND  
AXOS CLEARING LLC,

Defendants and  
Counterclaimants.

C.A. No. 19-2066-MN

JURY TRIAL DEMANDED

AXOS BANK,

Plaintiff,

v.

APEX CLEARING CORPORATION,

Defendant.

C.A. No. 20-18-MN

JURY TRIAL DEMANDED

**PLAINTIFF AXOS BANK'S PARAGRAPH-BY-PARAGRAPH  
RESPONSES TO APEX'S STATEMENT OF DISPUTED FACTS  
(IN THE TRADEMARK CASE FILED BY AXOS)**

Axos Bank hereby responds to Axos Clearing's statement of facts, on a paragraph-by-paragraph basis, as follows:

1. Undisputed, except to the extent that Application No. 88/279,031 was refused on April 9, 2019, not May 14, 2019, and that the USPTO did not cite Reg. No. 5156528 against Application No. 88/279,031, but these are not disputes of material fact.
2. Undisputed.
3. Undisputed.
4. Undisputed.
5. Undisputed.
6. Undisputed.
7. Undisputed.
8. Undisputed.
9. Undisputed.
10. Undisputed.
11. Undisputed.
12. Undisputed.
13. Axos Bank states that it disputes the mark and trade name is distinctive, but states that this is not material.
14. Undisputed
15. Undisputed
16. Undisputed
17. Undisputed
18. Undisputed

19. Undisputed
20. Undisputed
21. Axos Bank states that Apex has not raised a genuine dispute of material fact. *See*  
**D.I. 109 at 11, 12.**
22. Undisputed

DATED: September 9, 2021

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Financial, Inc. and Axos Clearing LLC*

**CERTIFICATE OF SERVICE**

I, Kelly L. Freund, do hereby certify that on this 9th day of September, 2021 a true and correct copy of: **PLAINTIFF AXOS BANK'S PARAGRAPH-BY-PARAGRAPH RESPONSES TO APEX'S STATEMENT OF DISPUTED FACTS (IN THE TRADEMARK CASE FILED BY AXOS)** was served on the following counsel of record vial electronic mail:

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